

EXHIBIT E

PART 2

1 A. It is not -- it really hasn't been a
2 topic of discussion.

3 Q. Sir, please listen to my question. Has
4 Professor Barnett told you that he reviewed all
5 of the materials that are included under the
6 heading Materials Reviewed?

7 A. Not specifically, no.

8 Q. Has he implied to you in some way that
9 he has reviewed all of those materials? I am
10 not sure what you mean by not specifically so I
11 have to follow it up.

12 A. These materials have been given for him
13 to review.

14 Q. And then you indicated under the
15 accident description, that's yours as well?

16 A. Yes, sir.

17 Q. Did you actually author that?

18 A. Yes.

19 Q. There is a -- there is a section here,
20 it says it was during this hand fitting of the
21 stock piece that Miss Lindquist's foot
22 inadvertently and unintentionally entered the
23 foot switch and activated the Heim press brake
24 causing devastating injury to Miss Lindquist's

1 hands, do you see that?

2 A. Yes.

3 Q. Did you include that?

4 A. I did.

5 Q. And where did that come from?

6 A. That came from the description of the
7 accident as I have seen it and the injury I have
8 seen to Miss Lindquist's hands.

9 Q. And you said -- let's focus on the --
10 not the injury side, no one is questioning the
11 severity of Miss Lindquist's injury.

12 A. Okay.

13 Q. But relative to the happening of the
14 accident you said that you have seen it -- where
15 did you see it?

16 A. I have seen accident descriptions as to
17 how she was there, and I have -- and the only
18 way to activate the switch is to push down the
19 pedal.

20 Q. Relative to your comment that,
21 "Miss Lindquist's foot inadvertently and
22 unintentionally entered the foot switch and
23 activated the Heim press brake," where does that
24 come from? Tell the court any piece of paper

1 that contains that information.

2 A. I believe Miss Lindquist indicated that
3 she wasn't intending to activate any footswitch.

4 Q. Well, where is the information that
5 says that her foot unintentionally entered the
6 footswitch?

7 A. The full shield -- you would have to
8 enter the full shield in order to activate the
9 footswitch.

10 Q. What if she were riding the pedal, sir,
11 that would be an intentional placement of the
12 foot in there; wouldn't it?

13 A. I suppose it might.

14 Q. It would be; wouldn't it, sir?

15 A. I answered that question.

16 Q. If she put her foot inside of the pedal
17 to apply the pedal, if she put her foot inside
18 of the foot control to apply the pedal and did
19 that intentionally, operated the press brake and
20 then kept her foot in there, then there would be
21 no unintentional entering of the footswitch;
22 would there?

23 A. By the definition of what you just
24 proposed I suppose not.

1 Q. Well, who has told you that her foot
2 unintentionally entered the footswitch as
3 opposed to her riding the pedal? Where did that
4 information come from?

5 A. I am not certain.

6 Q. Do you know that Tina Lindquist said
7 that her foot did not unintentionally enter the
8 footswitch?

9 MR. HARTMAN: Objection to the form of the
10 question. You are misstating facts of
11 Miss Lindquist's --

12 MR. ROBINSON: Okay.

13 MR. HARTMAN: -- testimony. Her testimony
14 was specifically contrary to that in that she
15 indicated that she removed her foot from the
16 foot pedal prior to --

17 MR. ROBINSON: Don't give the testimony,
18 Mr. Hartman. I object --

19 MR. HARTMAN: Then don't make statements.

20 MR. ROBINSON: -- to your speaking
21 objections.

22 MR. HARTMAN: I am stating what the record
23 actually --

24 MR. ROBINSON: You object to the form. Read

1 the rules. You are not allowed to make an
2 objection as you just did.

3 MR. HARTMAN: You are intentionally
4 misstating --

5 MR. ROBINSON: I am going to back it up,
6 Mr. Hartman, in our motion --

7 MR. HARTMAN: I am glad. Then do it.

8 MR. ROBINSON: -- and you will see it.

9 MR. HARTMAN: I am glad. Then do it.

10 MR. ROBINSON: So let's ask the question
11 again.

12 BY MR. ROBINSON:

13 Q. First of all, did you review her
14 deposition transcript?

15 A. I did.

16 Q. Did you see where she said that she did
17 not accidentally hit the activation device of the
18 foot control?

19 A. I have not reviewed her transcript for
20 months. I cannot recall.

21 Q. So you don't -- as you sit here today
22 you don't know what she said about how that
23 pedal came to be activated?

24 A. I can't recall.

1 Q. You don't know if it was an
2 unintentional entering or you don't know if it
3 was riding the pedal; is that fair?

4 A. I can't recall what she said in her
5 deposition as to how it exactly happened right
6 now.

7 Q. As you sit here today do you have any
8 way of confirming whether or not she -- her foot
9 unintentionally entered the foot control or if
10 instead she was riding the pedal?

11 A. As I sit here today I cannot.

12 Q. What is the number one method of
13 accidental activation of a foot control?

14 A. I have done no research in this area.
15 I have no idea.

16 Q. Well, did you read -- I think you said
17 you read Professor Barnett's article on this.

18 A. Yes, I have.

19 Q. Do you see where he has indicated that
20 the No. 1 method of accidental activation of a
21 foot control is by riding the pedal?

22 A. I believe I read that in there.

23 Q. Do you dispute that?

24 A. I do not.

1 Q. You have assumed in your report and in
2 your statement of the facts that she was not
3 riding the pedal and that her foot
4 unintentionally entered the foot control; is
5 that right?

6 A. Yes.

7 Q. Can you explain to the court any basis
8 for that fact that you have relied upon? And
9 that's a pretty significant fact; isn't it?

10 A. Yeah, that's for the -- for it to be
11 decided later.

12 Q. Well, if she was riding the pedal, sir,
13 the existence of a gate would have no impact on
14 the case; would it?

15 MR. HARTMAN: I am going to object to the
16 question. It is outside the scope of this
17 individual's participation in the preparation of
18 the expert.

19 He is not here to offer any opinions.
20 You have been advised that. I am not going to
21 allow you to ask him to give opinion testimony
22 today.

23 Furthermore, I am going to instruct you
24 that when you ask questions that you be --

1 fairly put them in the context they are and that
2 the articles that you are citing and the act of
3 riding of the pedal do not speak to the machine
4 at hand nor the similar type of machine at hand.
5 So I think it is extremely unfair, this line of
6 questioning that you are going.

7 It goes beyond the scope of discovering
8 this matter for an expert. He has no opinions
9 to offer as you have been advised in writing
10 before today.

11 BY MR. ROBINSON:

12 Q. Sir, if she was riding the pedal, the
13 existence of a gate is meaningless because the
14 gate would already be up; right?

15 A. I have no opinion to offer in this
16 matter.

17 Q. As a layperson do you understand what I
18 am talking about and as someone who is studying
19 to be an engineer? Do you at least know what I
20 am talking about?

21 A. I believe so.

22 Q. So would it be true as a layperson, as
23 a person studying to be an engineer that if she
24 was riding the pedal, the existence of a gate is

1 absolutely meaningless to this case; isn't it?

2 A. I can't offer any opinion on that.

3 Q. Can you explain any reason why -- any
4 justification as to why the gate would have any
5 meaning in this case if she were, in fact,
6 riding the pedal as opposed to an unintentional
7 entering?

8 A. I have no opinion to offer on that.

9 Q. Were you involved with the experiment?
10 What do you call what you did with those people
11 that were standing up and sticking their foot
12 into the foot control?

13 A. I believe that was testing designed by
14 Professor Barnett.

15 Q. Were you involved in that at all?

16 A. I instructed a technician as to what we
17 wanted to build, that fixture with the
18 footswitch and the light.

19 Q. Who were the people that were actually
20 the subjects of the testing?

21 A. At the time they were employees of
22 Triodyne.

23 Q. Were all of the test subjects employees
24 of Triodyne?

1 A. Yes, sir.

2 Q. And Triodyne is making money on this
3 case; right? You have submitted --

4 A. Yes.

5 Q. -- bills, you are making money for your
6 time; right?

7 A. Yes.

8 Q. Why were the subjects in that testing,
9 the employees of Triodyne standing up during
10 that testing?

11 A. The testing was performed -- was
12 designed by Professor Barnett. That's not a
13 question I can answer.

14 Q. Did Tina Lindquist -- did you hear Tina
15 Lindquist say she was not standing at the time
16 of her injury? Do you know that she was
17 sitting?

18 A. I don't know whether she was sitting or
19 standing, sir.

20 Q. Did you or Professor Barnett ever ask
21 her that when you talked with her?

22 A. No.

23 Q. Does that seem like something
24 significant that you would want to know before

1 you conducted a test and constructed the
2 materials on the makeup for that test which
3 required the subjects to be standing? Does it
4 seem like you would want to know if the actual
5 person who was injured was standing or sitting?

6 A. Could you repeat the question?

7 Q. Sure. When you are investigating a
8 case and preparing to perform a test and
9 particularly preparing to perform this test
10 where you had these subjects standing up which
11 is correct; right, you had them standing up?

12 A. Yes, sir.

13 Q. Wouldn't you want to know if the person
14 that was injured through the use of -- through
15 her use of the machine was sitting or standing
16 at the time of her injury?

17 A. I believe it would depend on the
18 purpose of the experiment, sir.

19 Q. Do you know of any reason why you would
20 want to conduct a test in this case of subjects
21 that were standing up if Tina Lindquist as she
22 has testified was sitting down?

23 A. I believe that I have stated the
24 testing was designed by Professor Barnett.

1 Q. I am just asking you if you know of any
2 reason why you would want to conduct a test with
3 subjects standing up if Tina Lindquist was
4 sitting down as she has testified?

5 A. I don't believe the test was
6 necessarily about the sitting or standing.

7 Q. And I want you to explain to the court
8 what relevance -- why a decision would be made
9 to have this -- the test subjects standing up.

10 A. Again, this wasn't my decision. This
11 Professor Barnett's decision. He designed the
12 question. I can't answer this question.

13 Q. As you -- and that's a fair answer. As
14 you sit here today can you offer any explanation
15 either a layperson, the person that set up the
16 test itself, as a person studying to be an
17 engineer, as an employee of Triodyne, can you
18 offer any explanation as to any favorable aspect
19 of the test that you conducted with the subjects
20 standing up --

21 MR. HARTMAN: Objection.

22 BY MR. ROBINSON:

23 Q. -- when we know that Tina Lindquist was
24 sitting down?

1 MR. HARTMAN: Objection to the form of the
2 question in that it misstates this witness'
3 prior testimony in that you indicated that he
4 oversaw the test. I believe that this witness'
5 testimony was specifically --

6 MR. ROBINSON: We don't need you to say what
7 the testimony was, Mr. Hartman. It is illegal
8 what you are doing.

9 MR. HARTMAN: I am not --

10 MR. ROBINSON: It is a violation of our
11 rules of court.

12 MR. HARTMAN: Well, I am going to say it --

13 MR. ROBINSON: I just want you to know. You
14 have done it a number of times. The only thing
15 I can ask you to do is stop.

16 MR. HARTMAN: Okay. And the reason I am
17 pointing this out is the witness has
18 testified --

19 MR. ROBINSON: I don't need you to tell me
20 the reason. All you need to do is make your
21 objection and move on. Tell the court.

22 MR. HARTMAN: I need to.

23 MR. ROBINSON: Why? You are not allowed.

24 MR. HARTMAN: That's the way I am going to

1 do it.

2 MR. ROBINSON: That's the way you are going
3 to do it. Okay, let's hear it.

4 MR. HARTMAN: This witness indicated earlier
5 that he oversaw the construction of a testing
6 mechanism. You indicated that he oversaw the
7 testing, and that was the error in your
8 question. So if you want to repeat the question
9 so that it makes sense based on the testimony I
10 would ask you to do so.

11 BY MR. ROBINSON:

12 Q. Do you remember the question?

13 A. No, I do not.

14 Q. Do you know of any favorable thing that
15 could be gleaned from a test in this case that
16 was conducted with subjects standing up when
17 Tina Lindquist was sitting down at the time of
18 her injury?

19 A. I do not.

20 Q. The next section of -- did you even
21 bring a copy of your report?

22 A. I did.

23 Q. You did?

24 A. Yes, sir.

1 Q. Great. There is one more piece of
2 paper there with you. What all did you bring?

3 A. Just that and the note of where to be.

4 Q. May I see it please.

5 A. Sure.

6 Q. You are hesitating. Do you have any
7 reason to hesitate in giving me that piece of
8 paper that relates to this case?

9 A. No.

10 Q. Okay.

11 A. I just didn't know you would be asking
12 for it.

13 Q. No, because you weren't provided with a
14 copy of my notice of deposition; right?

15 A. I have no idea.

16 Q. Okay. If we look at 3, Section 3, it
17 says identification.

18 A. Yes, sir.

19 Q. Who provided that?

20 A. That was both Professor Barnett and
21 myself.

22 Q. And I note here that the second
23 paragraph indicates that we were dealing with a
24 Model 532-SWH Hercules heavy duty footswitch

1 with a full shield provided at the time of the
2 sale of this press brake; is that right?

3 A. That is what the report states.

4 Q. Do you have any reason to dispute that?

5 A. Yes.

6 Q. And what is that?

7 A. That is that that was my error in
8 indicating the model number that was provided on
9 a drawing supplied by Heim that they cannot
10 determine if it was the correct drawing or
11 not -- or the correct specification.

12 Q. Do you know what footswitch was
13 supplied with the press brake back in 1978?

14 A. I do not.

15 Q. Does Professor Barnett know?

16 A. I have no idea as to what he knows or
17 does not know.

18 Q. Do you know of anyone that's ever -- do
19 you know of anyone that knows what footswitch
20 was provided with the press brake back in 1978?

21 A. I have no idea.

22 Q. I take it you saw the 1974 drawing that
23 was produced by Heim which identifies a 532-SWH?

24 MR. HARTMAN: It is a 1982 drawing.

1 MR. ROBINSON: Counsel, 1974 drawing, thank
2 you.

3 THE WITNESS: But it is -- there was scratch
4 marks on it.

5 BY MR. ROBINSON:

6 Q. Did you see the 1974 drawing that
7 identifies the 532-SWH?

8 A. I saw a page that was barely readable
9 and Model 532-SWH was noted on there and then
10 scratched off for a replacement model I believe
11 in '82 I believe the date was.

12 Q. Yes, okay. And the last sentence of
13 that identification section indicates -- where
14 it indicates -- let me -- that was a horrible
15 beginning of my question.

16 The first sentence identifies it as a
17 Model 532-SWH; is that right?

18 A. That is what the report states.

19 Q. And the second sentence says, "This is
20 consistent with photographs of the subject
21 footswitch after the accident"?

22 A. Which is incorrect.

23 Q. That's incorrect as well?

24 A. No, the -- it -- it -- the model number

1 is inconsistent with the photographs of the
2 footswitch after the accident.

3 Q. Well, who wrote that, that, "This is
4 consistent with photographs of the subject
5 footswitch after the accident"?

6 A. I believe I did.

7 Q. Did Professor Barnett read this before
8 he signed it?

9 A. I have no idea as to what he did or
10 not.

11 Q. Do you think that he would do that?

12 A. I cannot speculate as to what he would
13 do or would not do.

14 Q. Does he typically read things that he
15 signs?

16 A. I believe so.

17 Q. If you turn to Page 7, it is again
18 indicated it was a 532-SWH sold with the subject
19 press brake; doesn't it?

20 A. Yes, sir.

21 Q. Who wrote this section?

22 A. I believe I inserted the model number
23 in the report section that was dictated to me by
24 Professor Barnett.

1 Q. Well, who indicated -- back to our
2 first section where it says, This is consistent
3 with photographs of the subject footswitch, how
4 did that error occur? Why is that wrong I guess
5 is a better way to say? Why are you testifying
6 that that's now wrong?

7 A. No, I am testifying that the
8 consistency with the photographs and the
9 Model 532 is incorrect.

10 Q. Yeah, and how did that happen? I
11 assume you looked at the photographs. I assume
12 either you or Professor Barnett looked at the
13 photographs and then looked at the 532 and said
14 they look to be the same because that's what
15 this says, that's what this says; right?

16 A. That is -- I believe it says that it is
17 consistent with the photographs of the subject
18 footswitch.

19 Q. Yeah, it says the 532 is consistent
20 with -- the Model 532-SWH is consistent with the
21 photographs of the subject footswitch; is that
22 right.

23 A. Yes, and I said that's incorrect
24 several times now.

1 Q. Yes, okay, I want to make sure the
2 record has your -- your -- the errors in your
3 report identified. And how did that error
4 occur?

5 A. The error occurred because I -- we had
6 already written the -- I believe the section was
7 already written in terms of the -- describing
8 the footswitch as it does in the following
9 paragraph. And then I came upon the one page,
10 the Drawing A-470 was it? I believe that's the
11 number.

12 Q. I believe it is.

13 A. The specification of the footswitch.
14 And I saw the model number and just inserted it
15 into the report and didn't do the proper
16 research into what the Model 532 entailed.

17 Q. If you were to rewrite your report
18 would you include a different number?

19 A. If I were to rewrite the report, I
20 wouldn't include the Model 532.

21 Q. That's the same one you have included.

22 A. Yes, I would not include that number.

23 Q. What would you include, what number,
24 what model number?

1 A. I wouldn't specify a model number.

2 Q. Well, how do you know if Tina Lindquist
3 was using the foot control that was sold with
4 the machine in '78?

5 A. Personally I have no idea as to an
6 opinion on that.

7 Q. That's not -- okay.

8 Have you talked with Mr. Hartman about
9 this issue, about identifying the food switch
10 that Tina Lindquist was using as being the same
11 as the one that was sold in '78? Have you
12 talked with him at all about that issue?

13 A. The subject might have been broached in
14 terms --

15 Q. Might have been broached? When would
16 that have been broached?

17 A. Perhaps on a phone call and he might
18 have said such things to Professor Barnett. I
19 have no idea.

20 Q. Do you remember those conversations,
21 Mr. Ulmenstein?

22 A. I do not.

23 Q. Why do you say they might have been
24 broached, and they might have been broached in a

1 phone call and they might have been broached in
2 a conversation with Professor Barnett?

3 A. Because I believe that the
4 identification in this case is fairly important.

5 Q. Have you heard of anyone -- have you
6 heard anyone indicate that the foot control that
7 Tina Lindquist was using at the time of the
8 accident was the one that was sold with the
9 machine at the time in 1978? Has anyone said
10 that to you?

11 A. No one has said that this footswitch
12 was specifically the one sold with the machine
13 to me.

14 Q. I lost you. I am a little hard of
15 hearing. I am sorry. Say that again.

16 A. Sorry. No one has said to me that this
17 footswitch was specifically the one that was --
18 that came with the machine.

19 Q. Has anyone told you that it is not?

20 A. No one has told me specifically that it
21 is not.

22 Q. Have you read the deposition
23 transcripts of some of the employees of Corry
24 Manufacturing that have given their opinions

1 that they would not be the same?

2 A. I have not.

3 Q. That's a pretty significant issue did
4 you say to make sure we have the same footswitch
5 used by Tina Lindquist as the one sold back in
6 1978; right?

7 A. I am not certain.

8 Q. Sorry?

9 A. I am not certain. I can't --

10 Q. I think you just said it a moment ago.
11 It is a pretty significant question; isn't it?
12 You wouldn't want to sue Heim for providing a
13 dangerous footswitch that wasn't even in use at
14 the time of the accident; would you?

15 A. I have no idea, sir.

16 Q. Does that make sense to you, sir, that
17 you would author a report or your employer or
18 Mr. Barnett would author a report trying to hold
19 Heim liable for supplying a footswitch back in
20 1978 that wasn't even in use at the time of the
21 plaintiff's injury?

22 A. I can't give --

23 Q. Does that make any sense to you, sir?

24 A. I can't give any opinion on it, sir.

1 Q. You can't even say if that makes sense
2 to you?

3 A. Not in this venue in terms of I cannot
4 make a statement to that.

5 Q. What foot control was used for the
6 testing that you have described?

7 A. I believe one of the foot controls was
8 indicated towards the end of the report, 511, I
9 believe they are both 511's.

10 Q. When you say both 511's, what do you
11 mean by that?

12 A. The -- the Linemaster Model 511B2 I
13 believe was one of the models.

14 Q. I want you to check your report because
15 this is something I want to make sure we
16 don't --

17 A. On Page 11 in C the -- it indicates
18 that the Linemaster 511B2 used in our human
19 factors testing. They were both Linemaster 511
20 models I believe, one with the gate, one
21 without, both with the antitrip treadle latch.

22 Q. And was a 511 chosen?

23 A. I believe that was what we had in
24 Triodyne's selection of footswitches from

1 Linemaster.

2 Q. Why wasn't a 532 chosen?

3 A. I have no idea.

4 Q. You can still buy a 532 from Linemaster
5 today; can't you?

6 A. I am not certain.

7 Q. Have you looked at any of their
8 literature that has been identified in the
9 report that you saw?

10 A. I have not looked at any of the current
11 literature whether you can buy a 532 today, sir.

12 Q. Do you have any reason to believe you
13 cannot go out to Linemaster and buy a 532 today?

14 A. I have no reason to believe that I can.

15 Q. Why wasn't there -- was there any
16 attempt made by Triodyne employees to obtain a
17 532 for testing purposes since that's what was
18 identified in the report as being provided back
19 in 1978 with the machine?

20 A. No, sir.

21 MR. HARTMAN: I am going to object to the
22 form of the question and that the witness has
23 indicated that that 532 number is an incorrect
24 number --

1 BY MR. ROBINSON:

2 Q. You can answer the question, sir.

3 MR. HARTMAN: -- but go ahead.

4 THE WITNESS: No, sir.

5 BY MR. ROBINSON:

6 Q. I am sorry?

7 A. No, sir.

8 Q. And why not?

9 A. I believe the -- finding the model
10 number was towards the end of the collection of
11 the report materials and it was simply inserted
12 at the end.

13 Q. Have you ever been involved in any
14 other cases where Triodyne has represented a
15 foot control manufacturer?

16 A. Not personally, no, sir.

17 Q. Have you had any discussion with
18 Professor Barnett about Professor Barnett
19 previously representing Heim in a case?

20 A. No, sir.

21 Q. You have had no conversations about
22 that issue?

23 A. No, sir.

24 Q. There was a quote unquote "old Heim

1 file" that was referenced in the billing
2 records --

3 A. Yes, sir.

4 Q. -- of Triodyne. Have you ever seen
5 that old Heim file?

6 A. Yes, sir.

7 Q. And is that a case where Triodyne
8 represented Heim or spoke on behalf of Heim at
9 some point?

10 A. I am not certain. I believe that we
11 received the request for that mention out of the
12 billing. That was before I was involved in the
13 case. And it was found and I had someone make
14 copies to send it. That was my only involvement
15 with that material.

16 Q. My question was did you understand that
17 Triodyne was representing the interests of Heim?

18 A. I have no idea as to whom Triodyne was
19 representing in that matter.

20 Q. Is there a code of ethics for
21 engineers?

22 A. I believe so.

23 Q. Does it talk to the issue of
24 representing a company as an engineer and then

1 some later point representing an adverse party
2 for that same company?

3 A. I am not certain as to any statement to
4 that effect.

5 Q. Professor Barnett has testified
6 previously that there is such a prohibition --

7 A. Okay.

8 Q. -- and that he would never do that.

9 A. All right.

10 Q. Have you ever heard anyone talk about
11 that issue before?

12 A. Yes, sir, as in terms of a conflict.

13 Q. Yes, sir. And why is that a conflict?

14 A. If you glean materials that otherwise
15 you would not have on your own in the course of
16 working for a corporation, you shouldn't be
17 allowed to use those same materials later in any
18 matter against them.

19 Q. Have you ever worked on -- have you
20 ever known Professor Barnett to represent any
21 other -- any foot control manufacturers?

22 A. I believe that he has, but I don't have
23 any personal knowledge of that.

24 Q. I understand you are not going to be

1 testifying at the trial concerning any opinions
2 whatsoever; is that true?

3 A. That was the intention.

4 Q. And why is that?

5 A. I have no opinions to offer. That is
6 not my role in my work at Triodyne.

7 Q. Do you have the opinion that a foot
8 control that does not have a gate is defective?

9 A. Sir, I am not here to express any
10 opinions.

11 Q. Do you have that opinion?

12 A. I am not here to express any opinions.

13 Q. I am asking you if you have that
14 opinion.

15 MR. HARTMAN: He has answered and that's it.

16 MR. ROBINSON: No, no, no, I am hearing a
17 different answer.

18 BY MR. ROBINSON:

19 Q. I am not asking if you are here to
20 express that opinion. I am asking if you have
21 that opinion?

22 MR. HARTMAN: You can't compel him to give
23 an opinion.

24 THE WITNESS: I am not giving opinions in

1 this case, sir.

2 BY MR. ROBINSON:

3 Q. And why aren't you giving opinions? I
4 am sorry if I asked that, and I want to make
5 sure I understand your reasoning for the court.

6 A. That isn't my role, sir, at Triodyne.
7 I assist, I act as a contact, I help prepare
8 materials, review materials. I have never
9 testified before in any matter and I was not
10 intending to in this one.

11 Q. You said you had reviewed this old Heim
12 file?

13 A. I -- I said I had it copied, and that
14 was pretty much the extent of my --

15 Q. I am sorry, I thought you testified
16 that the -- and the record will correct me, I
17 thought you said that you had reviewed it.

18 A. I have -- I might have glanced through
19 it when it was being copied, but I haven't paid
20 much attention to it.

21 Q. Are you familiar with ANSI standards
22 relative to power presses and press brakes?

23 A. I have reviewed them somewhat.

24 Q. For purposes of this case?

1 A. I believe I have looked at them for
2 this case.

3 Q. Did you notice anything in the ANSI
4 standards that makes it -- makes a foot control
5 defective if it doesn't have a gate?

6 A. I don't believe ANSI specifies anything
7 that's defective in their standards, sir.

8 Q. Do you know if Professor Barnett has
9 previously testified that foot controls that do
10 not have gates are safe?

11 A. I have no idea as to all of
12 Professor Barnett's previous testimony, sir.

13 Q. I didn't ask about all of his previous
14 testimony.

15 A. I have no idea as to any of his
16 previous testimony certainly.

17 Q. Any of his previous testimony?

18 A. No, I have never read any of his
19 depositions that I can recall nor have I been
20 present for any of them.

21 Q. How familiar are you with the point of
22 operation guard and safety device requirements
23 of ANSI?

24 A. It is something I never studied nor

1 researched.

2 Q. Do you have any familiarity with
3 warnings and the adequacy of warnings?

4 A. I can't give opinions to the adequacy
5 of warnings.

6 Q. Do you have any experience or expertise
7 in the accuracy of the tests that you conducted
8 as -- I apologize.

9 Do you have any experience or expertise
10 in the adequacy of the test that was conducted
11 by Triodyne when you compare that test to what
12 Tina Lindquist was doing?

13 A. I believe it would depend on the
14 purpose of the test, sir, but I can't speak to
15 the purpose of the test nor what it was intended
16 to show.

17 Q. Do you know if there would be any
18 effect on testing a subject on the inadvertent
19 placement of a foot into a foot control if there
20 were a big press in front of them that cut off
21 their hands?

22 A. I couldn't say.

23 Q. You didn't put a press in front of
24 these test subjects; did you?

1 A. No, sir.

2 Q. As you sit here, sir, and as you are
3 testifying, do you know of any similarity
4 between the test that was conducted by Triodyne
5 and the injury that was received by Tina
6 Lindquist?

7 A. I don't necessarily believe that the
8 test was -- I can't speak --

9 Q. Can you identify any similarity? When
10 you look at the test that was conducted by
11 Triodyne and the manner in which Tina Lindquist
12 was injured, can you identify any similarity for
13 the court between those two issues?

14 A. I can't speak to the purpose of that
15 testing, sir.

16 Q. I am just asking if you can identify
17 any similarity?

18 A. I believe it was footswitch testing.

19 Q. So the only similarity you can identify
20 is that there was a footswitch used in both? Is
21 that what you are saying? I think --

22 A. That's not what I am saying. I am
23 saying that it was footswitch testing that was
24 conducted and designed by Professor Barnett

1 and --

2 Q. Please listen to my question. As you
3 sit here, sir, do you know of any similarity
4 between that foot control testing that was
5 performed by Triodyne and Tina Lindquist's
6 injury in the way she was injured?

7 A. I can't say for certain, sir.

8 Q. I am not concerned about certain. If
9 there is something you are not certain about, I
10 don't want to hear about it.

11 MR. HARTMAN: He has answered.

12 MR. ROBINSON: I am going to get an answer,
13 Mr. Hartman.

14 MR. HARTMAN: You have got it four times.
15 You just don't like it.

16 MR. ROBINSON: That doesn't make any sense.

17 BY MR. ROBINSON:

18 Q. You can answer, sir. Do you know of
19 any similarity between that testing and the
20 manner which Tina Lindquist was injured?

21 A. I can't say.

22 Q. Now I have an answer. I appreciate
23 that.

24 A. Whatever you need.

1 Q. You mentioned earlier you had a -- and
2 I appreciate it, you and I may disagree on some
3 things and maybe we won't. One thing you had
4 mentioned you disagree with my terminology about
5 adding a danger, and you said it didn't add a
6 danger to put a gate according to
7 Professor Barnett's safety brief.

8 A. Yes.

9 Q. But it increases the risk of riding the
10 pedal I believe is what you said; is that right?

11 A. I believe I was trying to correct you
12 as to your indication that that paper said that
13 the gate introduces the riding the pedal
14 phenomenon.

15 And I tried to describe the manner in
16 which the paper states that as you go from one
17 side to the other the inclination to ride the
18 pedal increases.

19 Q. Yeah, and there must have been
20 miscommunication. I never suggested that it
21 introduces riding the pedal.

22 A. It was the word that was used. You
23 might not have intended it.

24 Q. Increases -- creates an additional

1 danger which I meant because it increases the
2 likelihood of riding the pedal. With all that
3 said why is that, that if you have a gate, it
4 increases the likelihood of someone riding the
5 pedal? I think I understand what -- what -- why
6 that is, but tell me why that is.

7 MR. HARTMAN: He is --

8 THE WITNESS: I can't speak to that. I have
9 done no footswitch research, no testing.

10 BY MR. ROBINSON:

11 Q. What has Professor Barnett said about
12 that as to why a gate increases the likelihood
13 of riding a pedal?

14 A. I believe that the paper states that
15 the -- in the testing that was done in that
16 matter that the operator doesn't remove his foot
17 when it is too hard to get it back in in the
18 cases that he was describing.

19 Q. Do you anticipate -- strike that.

20 Will you be testifying as a fact
21 witness in this case?

22 A. I have no intention of testifying in
23 this case in any manner.

24 Q. And why is that?

1 A. It is not my role. It's -- I assist.
2 I review documents. I summarize documents. And
3 I assist with the preparation of report. I have
4 no opinions to offer.

5 Q. I am not talking about opinions. I can
6 appreciate what you are saying there, and I am
7 just asking about in any way. For instance --
8 not even for instance.

9 What do you remember -- tell me
10 everything you remember Tina Lindquist telling
11 you about the accident, not the injuries, not
12 the injuries, about the happening of the
13 accident.

14 A. I don't believe she spoke much to us in
15 that 15-minute time span that I have described
16 earlier. She -- we couldn't talk about the
17 accident with her. She -- and we were told that
18 she gets upset while speaking it so we didn't
19 talk to her about the accident so --

20 Q. So did all of the information that you
21 gleaned about the happening of the accident come
22 from Mr. Hartman?

23 A. No, Tina Lindquist's deposition as
24 previously stated and then as noted on the

1 report.

2 Q. And did you say you did or did not read
3 all of that transcript?

4 A. I believe I did. It was several months
5 ago, and I have not reviewed it in the mean
6 time.

7 Q. Were summaries prepared in any of the
8 depositions?

9 A. I believe so, yes.

10 Q. Where are those?

11 A. I can't say.

12 Q. We haven't been provided any --

13 A. Deposition summaries?

14 Q. I am not sure. Hold on. Let's --

15 A. I swear they were copied.

16 Q. They might have been, and I don't want
17 to misspeak. Hold on. There may have been
18 some. I am -- I will let you look --

19 A. If not, I will get them to you today.

20 Q. I am sorry?

21 A. If not, I will get them to you today.

22 Q. No, I am not concerned about giving
23 them to me today. I was concerned about
24 preparing for this deposition and knowing -- and

1 Mr. Hartman has represented on a number of
2 occasions that they were supplied.

3 Maybe they are. I want you to look
4 through Exhibit A and tell me if the deposition
5 summaries that were prepared by Triodyne are
6 contained within that packet of information
7 that's been represented on a number of occasions
8 as being the complete file less the depositions
9 and the discovery that's been taken in this
10 case.

11 A. I do not see any deposition summaries
12 in this Exhibit A.

13 Q. Were there summaries prepared for all
14 of the depositions?

15 A. Summaries were prepared for the
16 depositions that were used that were noted on
17 the front page of the report, the -- Tina
18 Lindquist, Anthony Mase and Zygmund Zajdel.

19 Q. Where are they? Where are the
20 summaries?

21 A. I believe that Mr. Mase and Mr. Zajdel
22 are currently with Professor Barnett. The Tina
23 Lindquist deposition summary might have been
24 kept with -- the deposition summaries were

1 usually kept with the depositions, and I believe
2 that's -- that would be my fault why they didn't
3 get copied in this, and I apologize for that.

4 Q. That's not your issue. It is
5 Mr. Hartman's. We have a court order that
6 required them to be produced before today. You
7 can at least confirm for the court that we don't
8 have the complete file materials; isn't that
9 true?

10 A. I confirm that your Exhibit A here
11 doesn't have deposition summaries provided by
12 Triodyne.

13 Q. In reviewing Exhibit A can you identify
14 anything else that we haven't been provided?
15 I'd like you to take your time please and look
16 at it. By the way, while you are looking who
17 prepared those deposition summaries?

18 A. I summarized the depositions.

19 Q. And you are the one that prepared these
20 materials as well for copying and forwarding to
21 us; right?

22 A. I believe so.

23 MR. ROBINSON: I am reserving the right to
24 bring back both witnesses.

1 MR. HARTMAN: With regard to the deposition
2 summaries and anything else that --

3 MR. ROBINSON: Well, Mr. Hartman, you were
4 ordered to do that before we came out to
5 Chicago.

6 MR. HARTMAN: Well, if such summaries exist,
7 they were already --

8 MR. ROBINSON: He has already said they do.

9 MR. HARTMAN: I am just saying, if such
10 summaries exist and they were requested.

11 THE WITNESS: With the exception of the
12 deposition summaries as previously stated the
13 videotape of both the testing and --

14 BY MR. ROBINSON:

15 Q. The video was provided?

16 A. Yes, and the documents provided by --
17 in the discovery I believe that is the complete
18 file.

19 Q. Does Professor Barnett -- have you ever
20 seen him take any notes when he is involved with
21 the case?

22 A. I believe so.

23 Q. Did you see any notes in there?

24 A. I did not see any notes in Exhibit A.

1 Q. Did you ever inquire of
2 Professor Barnett if he took any notes?

3 A. I did not ask.

4 Q. Did you make any notes during your 12
5 or so conversations with Mr. Hartman?

6 A. I can't recall.

7 Q. Is that something you would normally
8 do?

9 A. It's -- apparently wasn't something
10 that was in the file.

11 Q. I am not -- we know that I haven't been
12 provided with the whole file. I am beyond that
13 issue.

14 A. No.

15 Q. I am saying that's something you would
16 normally do when you speak with an attorney on a
17 case is make some notes of that conversation?

18 A. I might, I might not.

19 Q. Do you ever remember making any note
20 regarding any conversation that you had, any of
21 the dozen or so conversations that you had with
22 Mr. Hartman at any time, because we know the
23 number provided, do you ever remember making any
24 note?

1 A. I cannot specifically recall writing
2 anything down while speaking to Mr. Hartman.

3 MR. ROBINSON: Okay. I really can't ask
4 much more. If we can't really confirm the
5 remains of the remaining aspects of the file
6 materials are here and I appreciate your time,
7 Mr. Ulmenstein.

8 MR. HARTMAN: We are not going to waive. We
9 want to review it.

10 THE VIDEOGRAPHER: Off the record at 11:44 a.m.

11 (Recess taken.)

12 THE VIDEOGRAPHER: It is the beginning of
13 the Tape No. 2. Back on the record at 5:00 p.m.

14 FURTHER EXAMINATION

15 BY MR. ROBINSON:

16 Q. Okay, sir, thank you for coming back
17 with the -- I guess following the delivery of
18 the file materials. Were you involved with
19 putting those file materials together?

20 A. Yes, sir.

21 Q. Professor Barnett also brought some
22 file materials, and I wanted to ask you a couple
23 of questions on some of the items. Barnett
24 Exhibit A, what do you understand these

1 photographs to be?

2 A. I believe those photographs are of a
3 footswitch that was at Mr. Hartman's office.

4 Q. Okay. Who took these photographs?

5 A. I believe Christopher Ferrone.

6 Q. Who is that?

7 A. He was an engineer for Triodyne at the
8 time, and he is currently -- he followed Peter
9 Poczynok as previously mentioned to Arca.

10 Q. Can you spell his last name for the
11 court reporter.

12 A. F-E-R-R-O-N-E.

13 Q. Okay. And in another document that we
14 were given is the original report --

15 A. Yes.

16 Q. -- that Professor Barnett brought with
17 him. He indicated on here that on Page 2 there
18 is some handwriting and he said it was yours.

19 A. Yes, sir.

20 Q. Is that your handwriting?

21 A. It is.

22 Q. And when did you write that on that
23 report?

24 A. I believe it was yesterday afternoon.